



STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT

GILBERT TORRES

Petitioner

2010 MAY 27 PM 2:49

GERILDA M. LOPEZ

BY _____ DEPUTY

No: D-1314-CR-01-483

Vs.

ANTHONY ROMERO, or successor,
Warden, Central New Mexico Correctional
Facility

Respondent

ORDER DENYING PETITION
FOR
WRIT OF HABEAS CORPUS

This matter came before the Honorable John Pope, District Judge, for hearing on the merits of the petition on the 6th day of October, 2009 and on the 7th day of December, 2009. The Petitioner appeared in person and through his attorney, Mr. Todd Hotchkiss. The Respondent appeared through Michael E. Martinez, Special Assistant District Attorney for the Thirteenth Judicial District. The Court, having considered the testimony of witnesses and the arguments and authorities presented by counsel, finds:

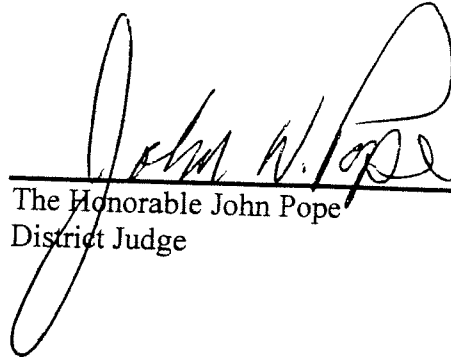
1. The Court has jurisdiction over the persons and subject matter of this action.
2. The gravamen of the petition is that the Petitioner received inadequate representation of counsel at his trial in that his attorney did not file a motion to suppress evidence based on a warrantless search of his premises.
3. On or about the 3rd day of December, 2001, the Petitioner made telephonic contact with the police alleging the suicide of his ex-wife. This telephone call is

conceded by both defense and the prosecution to have triggered the police officer's right to enter the property of the Petitioner.

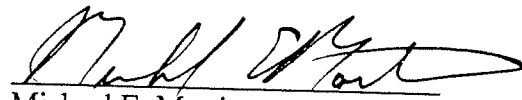
4. The officers entered the premises of the Petitioner in furtherance of their duties under the caretaker exception to the Search Warrant requirement and looked for evidence of the alleged suicide. Their primary motivation was that of community caretaker, and as such, they did not have to completely abandon their investigative function.
5. The officers' presence on the Petitioner's premises was within the scope of their function as community caretakers and was consensual. Any investigative functions undertaken while on the premises was incidental to the consent given when the Petitioner called to report a suicide.
6. Given the totality of the circumstances, the Petitioner's Fourth Amendment rights were not violated.
7. Under *State of New Mexico v. Patrick Clark Ryon*, 2005 NMSC 005, 137 N.M. 174, 108 P. 3d 10332, the officers had a right to enter the premises and to search the premises in furtherance of their duties as community caretakers looking for evidence of suicide. Based on this authority, it is highly improbable that a motion to suppress evidence for lack of a search warrant would have been successful.
8. The failure of Petitioner's trial counsel to move to suppress evidence does not amount to ineffective assistance of counsel.
9. To the extent that Petitioner's trial counsel should have filed a motion to suppress, such a failure did not prejudice the Petitioner in that there is a high probability that the motion would have failed.
10. All other issues raised in the Petition are resolved in favor of the Respondent and against the Petitioner.

11. The Petition should be denied.

IT IS THEREFORE ORDERED that the Petition for a Writ of Habeas Corpus be and hereby is denied.


The Honorable John Pope
District Judge

Approved as to form:


Michael E. Martinez
Special Assistant District Attorney

Todd Hotchkiss
Attorney for Petitioner